CF0000061126

(71)

CA 238/97

2

APPEAL OF PRISONER Division Bench (Criminal)

No. 505 Name कलमूमि अर्जुन

Father's Name आयतु ..esident ग्राम- दुगेली इमली पारा थाना- बचेली

Age 30 Sentenced to आजीवन कारावास on 29.8.96

Under Section 302 I.P.C. by माननीय अति० सत्र न्यायाधीश जगदलपुर

S.T. No. 151/96

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 29.8.96
3. Date on which appeal sent :- 9.9.96
4. Whether the prisoner wished to be represented or not. Yes/No

No. 505 Name कलमूमि अर्जुन स/० आयतु

Continued in जिला Jail जगदलपुर

No. 417/अपील/96 Dated 9/9/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur. together with a copy of Judgement or order passed in the case in favour of transmission to the proper Appleate Court.

Superintendent-Central/Distt/Sub-Jail.

Date of receipt in C.J.M's Office. 20/9/96

Date of receipt of record to accompany. -

Memo of Appeal of the Appellate Court. -

No. 1281 dated 21.9.96

Forwarded to the Hble S.J. Jagdalpur

C.H.MAGISTRATE..मुख्य न्यायिक मजिस्ट्रेट.....

.....जगदलपुर.....

Date of receipt in Appleate Court:

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....Cr.A.No.238/97... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON. SHRI L.C. BHADOO &
HON. SHRI DHIRENDRA MISHRA,JJ

Criminal Appeal No. 238 of 1997

Appellant — **Kalmumi Durjan**

Vs

Respondent — **State of M.P.**

Shri N.K.Chatterjee, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri D.K.Gwalre, learned Dy.G.A. for the State.

ORAL JUDGMENT
(21/03/2006)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 29.08.1996 passed by Additional Sessions Judge, Jagdalpur in S.T.No.151/96 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Sections 302 of the Indian Penal Code sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that on 10.11.95 at about 6.30 p.m. the deceased Kalmumi Tundi was preparing *Beedi* in the courtyard of his

15

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....Cr.A.No.....238/97 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

house. Accused reached there with the wooden plank and assaulted with the same on the head and temporal region of Kalmumi Tundi as a result of which he died spontaneously. The crime was witnessed by children of the deceased namely Somaru and Budhram and they raised cries on which the wife of deceased namely Kalmumi Hidme saw the accused running away holding wood in his hand. She raised the cries and called Kalmumi Kuma and appraised him about the incident. Thereafter the village Sarpanch Hunga Ram (P.W.-4) was intimated about the incident and on the next day the panchayat was convened in which the accused/appellant made extra judicial confession regarding the commission of the offence by him. P.W.-4 Hunga Ram lodged the report P-2 in the police station-Bacheli on 11.11.95 at 6.30 p.m. After registering the offence, S.H.O. took up the investigation and left for the scene of occurrence. Site plan P-1 of the place of occurrence was prepared by the Patwari and site plan P-4 was prepared by the Investigating Officer. After giving notice P-5 to the panchas prepared panchnama P-7 of the body of Kalmumi Tundi. The body of Kalmumi Tundi was sent for post mortem examination to Primary Health Centre, Bacheli under P-8 where Dr. G. R. Uraon (P.W.-3) conducted the post mortem and gave the report P-11 and opined that the mode of death was due to coma which was due to injury on the head. Blood stained soil and plain soil were taken into possession from the place of occurrence under P-9. The weapon of offence – one piece of burnt wood was taken into possession under P-10. The clothes of the accused/appellant were taken into possession under P-11. The clothes of the deceased were taken into possession under P-12. After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada who in turn committed the case to

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

16

मामला क्रमांक .....Cr.A.No.238/97 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Sessions Judge, Jagdalpur from where the learned Additional Sessions Judge, Jagdalpur received the case on transfer for trial.	
3.	The prosecution in order to establish the charge against the accused/appellant examined eight witnesses. On the other hand statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him.	
4.	Learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.	
5.	We have heard Shri N.K.Chatterjee, learned counsel on behalf of the accused/appellant and Shri U.N.S.Deo with Shri D.K.Gwalre, Dy. G.A. on behalf of the State.	
6.	Homicidal death of Kalmumi Tundi is not in dispute.	
7.	As far as the involvement of the accused/appellant in committing the crime in question is concerned, there is no ocular evidence available in this case as the two child witnesses who witnessed the crime have not been examined by the prosecution. Thus the case rests on the circumstantial evidence i.e. the extra judicial confession by the accused before the panchayat in the presence of P.W.-4,5,6,7 & 8 and that just after the incident P.W.-5, wife of the deceased saw the accused/appellant running away from the place of occurrence holding wooden plank in his hand.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

17

मामला क्रमांक .....C.A...No.:238/17 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8. P.W.-4 village Sarpanch Hunga Ram, P.W.-5 Kalmumi Hidme, wife of the deceased, P.W.-6 Bugori, P.W.-7 Kuma Kalmumi and P.W.-8 Kalmumi Chhannu has categorically stated that a panchayat was convened in connection with the death of Kalmumi Tundi and in which the accused/appellant was called and he made extra judicial confession before the panchayat that he has attacked Kalmumi Tundi with the wooden plank because he used to draw the *Sulfi* from his *sulfi tree* and nothing else has been brought in the cross examination of these witnesses which makes the evidence of these witnesses untrustworthy and unreliable. P.W.-5 Kalmumi Hidme wife of the deceased had stated in paragraph three of her evidence that on hearing the cries of her children when she came out, she saw that the accused was running away holding wood in his hand. Therefore from the above evidence of these witnesses it is established that she saw the accused running away from the place of occurrence i.e. from her house where her husband was assaulted.	
	9. Thus, based on the extra judicial confession made by the accused and that he was seen at the place of occurrence while running away by P.W.-5 Kalmumi Hidme, wife of the deceased, the involvement of the accused in the crime in question is established beyond reasonable doubt.	
	10. Learned counsel for the accused/appellant argued that from the evidence available on record it is established that the accused assaulted the deceased without any intention to cause his death but because the deceased used to draw *sulfi* from the *sulfi tree* of accused which infuriated him, therefore without any intention, in a heat of passion the accused	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

18

मामला क्रमांक .....Cr.A.No.238/97 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assaulted the deceased. Thus, the offence against the accused does not travel beyond Section 304-II of the IPC.

11. On the other hand learned Additional Public Prosecutor supported the prosecution case.

12. From the perusal of the FIR (P-2) it is evident that on enquiry from the accused by the panchayat as to why he had assaulted the deceased he made it clear to them that the deceased used to draw *sulfi* from his *sulfi tree* on which quarrel started between them and he took the wooden plank lying there and assaulted the deceased with the same.

13. As per the evidence of P.W.-3 Dr.G.R.Uraon there were two injuries on the head of the deceased – one lacerated wound on the mid frontal region in the size of 7cm. x 2cm. deep up to skin; the other injury was swelling near the right ear in the size of 5 cm. x 3 cm. and on dissection of the head it was found that there was linear fracture in the mid frontal bone in the size of 10 cm. x 6 cm. In view of the above evidence it is established that there was some quarrel between the accused and the deceased as the deceased used to draw *sulfi* from the *sulfi tree* of the accused and at that moment the accused picked up the wooden plank and assaulted the deceased.

14. Therefore from the above fact it could not be inferred that the accused assaulted the deceased with the intention to cause his death but from the above evidence it can be inferred that while attacking the deceased with the wooden plank, the accused was not having the knowledge that by

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....Cr.A.No.238/97 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —C—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	assaulting with the wooden plank he could cause the death of the deceased therefore the offence against the accused/appellant does not travel beyond Section 304-II of the IPC.	
15.	In the result the appeal is partly allowed. The conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside. Instead thereof the accused/appellant is convicted under Section 304-II of the IPC and he is sentenced to undergo RI for ten years. The accused/appellant is in custody since 13.11.1995 which is not disputed by the Additional Public Prosecutor and thus he has already completed the sentence imposed upon him. It is therefore directed that the accused be set at liberty forthwith if not required in any other case.	
	Sd/- L.C. BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

SP/FS/2005 - 20,000